

The New Jersey Open Public Records Act (OPRA)

(N.J.S.A. 47:1A-1 et seq.)

Handbook For Records Custodians



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The Open Public Records Act (OPRA):
A Handbook For Records Custodians
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Table of Contents

Subject	Page #
Introduction: Use of This Handbook	3
Part I – What Is OPRA and Who Is Covered By It?	4
Part II – What Are Government Records?	6
Part III – How Does The Public Obtain Government Records?	12
Section 1 – Making a Request	12
Section 2 – Responding to a Request	15
Section 3 – Costs and Formats of Copies	17
Part IV – How Can Access Be Denied?	20
Part V – What Is the Government Records Council?	21
Part VI – Special Circumstances	24
Appendix	
Appendix A – List of Executive Orders with Disclosure Requirements	28
Appendix B – List of Executive Orders with Exceptions to Disclosure	30
Appendix C – List of State Statutes with Disclosure Exceptions	*
Appendix D – List of State Agency Rule Disclosure Exceptions	*

* Will be included in a later release.

Use of This Handbook

The OPRA Handbook for Records Custodians has been prepared by the Government Records Council to help public agency records custodians understand the requirements of the State of New Jersey's [Open Public Records Act](#) (P.L. 2001, c. 404, N.J.S.A. 47:1A-1 et seq.). While the handbook focuses on the needs of records custodians, we anticipate that it will also be a useful resource for public, press, and commercial organizations interested in obtaining access to government records.

This handbook serves as a reference, but it does not serve as legal advice and is not a substitute for legal advice from public agency legal advisors. Records custodians should rely on agency legal advice on issues that could result in disputes, particularly those related to refusal to disclose records.

The Council's Web site at www.state.nj.us/grc contains useful information on the law, including summaries of exceptions to disclosure, copies of gubernatorial Executive Orders, lists of statutes containing exceptions, and a regularly updated list of "frequently asked questions" about the law. Custodians, their legal advisors, and the public are urged to check the Web site when questions arise and should also feel free to submit their questions to the Council via our toll-free help-line, e-mail, regular mail, or directly through the Web site.

The Council pledges to respond to questions about the law and to inquiries and complaints as expeditiously as possible. While we will do our best to uphold this pledge, our degree of success will be balanced by the number of questions we receive and our staff's ability to handle them quickly. Regardless, each request will be acknowledged and will ultimately receive a response.

When calling the Council, our automated telephone attendant will greet callers and guide them through a series of questions designed to help us understand what information is needed. This process will enable us to respond to the caller with an answer as soon as practicable. We ask for our callers' patience in using the system, and we promise to do our best to respond to all callers in the order that the calls are received.

Finally, it is the Council's intention to update this handbook regularly and to make it available through the Council's Web site and through other distribution channels. If this version is more than six months old, the reader should contact the Council to inquire if a more current version is available. Newer versions will contain information about Council advisory opinions and the results of any precedent-setting court decisions.

Part I – What Is OPRA And What Are Government Records?

What is the Open Public Records Act (OPRA)?

OPRA is a series of substantial changes to the state law that governs the public's access to government records. It was enacted to give the public greater access to records maintained by public agencies in New Jersey by balancing the public's interest in government records, respect for personal privacy, and the efficient process of government. The statutory reference of the law is Chapter 404 of the Laws of 2001, and is compiled in the statutes as [N.J.S.A. 47:1A-1 et seq.](#)

What public policies are expressed in the Open Public Records Act (OPRA)?

The law states the following public policies:

- “It is the public policy of New Jersey that government records must be readily accessible for inspection, copying, or examination by its citizens, with certain exceptions, for the protection of the public.
- It is the public policy of New Jersey that any limitations on the right of access to records should be interpreted in favor of the public's right of access.
- It is also the public policy of New Jersey that a public agency has a responsibility and an obligation to protect a citizen's personal information that is in the possession of a public agency when disclosure of that information would violate the citizen's reasonable expectation of privacy.”

These three policies must be kept in mind when custodians are considering requests for access to government records.

What government entities does the law cover?

Generally speaking, the law covers:

- The executive branch of state government and all independent state agencies and authorities. This includes all state colleges and universities;
- All counties, municipalities, school districts, fire districts, planning and zoning boards and other county and local boards or agencies, and all independent county or local agencies and authorities established by municipal or county governments;
- The legislative branch; however, information received by a member of the state Senate or Assembly from or concerning a constituent is not considered to be a government record; and memoranda, letters, notes, reports, and any other communication prepared for the specific use of a member of the state Senate or Assembly are not considered to be government records.
- OPRA does not cover the judicial branch of state government, such as the Supreme Court of New Jersey, the Superior Court of New Jersey, the municipal courts, the Administrative Office of the Courts, and the agencies, offices, and boards under their authority. The Courts have adopted their own records disclosure policies and procedures.

The law uses the term “public agency” to describe the organizational units of government. Specifically, OPRA defines public agency as:

- Any of the principal departments in the executive branch of state government, and any division, board, bureau, office, commission, or other instrumentality within or created by such department;
- The Legislature of the state and any office, board, bureau, or commission within or created by the legislative branch;
- Any independent state authority, commission, instrumentality, or agency;
- Any political subdivision (generally, any county, municipality, or school district) or combination of them;
- Any division, board, bureau, office, commission, or other instrumentality within or created by a political subdivision of the state or combination of political subdivisions; and
- Any independent authority, commission, instrumentality, or agency created by a political subdivision or combination of political subdivisions.

Generally speaking, OPRA does not cover private businesses or not-for-profit entities, even if they receive some public funding. However, case law has generally found that OPRA will reach private entities when a public agency contracts with them to perform a governmental function.

Part II –About Government Records

What is a government record?

Generally stated, “government record” means any record that has been made, maintained, or kept on file in the course of official business by a public agency or an officer of that public agency, or that has been received in the course of official business by a public agency or an officer of that public agency.

OPRA covers more than just paper copies or written information. Under OPRA, “government record” includes papers, printed documents, handwritten documents, tape recordings, computer records, electronically stored information, books, maps, and photographs.

The issue of how long such records must be kept available to the public is covered under the state records retention law, [N.J.S.A. 47:3-1 et seq.](#)

Although, it is the public policy of the State of New Jersey that government records be readily accessible, OPRA recognizes that for public agencies to perform certain governmental functions properly, and for the protection of personal privacy, some records and information may need to be kept confidential. OPRA attempts to balance these competing interests by, on the one hand, defining “government records” very broadly, and, on the other hand, providing a number of exceptions that allow public agencies to deny access to certain types of documents for public inspection and copying.

What are the exceptions to the definition of “government record” under OPRA?

While many documents are open for inspection and copying by the public, the Legislature understood that there are some records which cannot be made readily accessible to the public because of a citizen’s reasonable expectations of privacy in records in the possession of a public agency, because of public safety and security concerns, or because of the need to ensure full and robust debate and consideration of issues within public bodies. Under OPRA, there are two types of exceptions to the definition of “government record”: general and specific.

What are the general exceptions from disclosure under OPRA?

Deliberative Material: The term “government record” does not include inter-agency or intra-agency advisory, consultative, or deliberative material. Such records are commonly referred to as “ACD” or deliberative material exceptions. For an ACD exception to apply to a record, it must:

- Be prepared before a public agency adopts a policy or makes a decision, and
- Contain opinions, recommendations, or advice.

Examples of ACD exceptions include recommendations, draft documents, proposals, suggestions, and other subjective documents that reflect the personal opinions of the writer rather than the final policy or decision of the public agency.

The ACD exception does not cover purely factual material. If factual materials are contained in a document that also contains advisory, consultative, or deliberative materials, then the deliberative materials must be redacted, and the factual materials should be made accessible. How to redact information is discussed in more detail below.

Material for which there is an expectation of privacy: Since there is a public policy to protect personal information concerning which a citizen may have an expectation of privacy, a custodian must be alert to records that may contain such information.

There are three other general exceptions:

- Records not yet in existence are not subject to OPRA, so a prospective or standing order for records as they become available is not enforceable.
- OPRA does not require that a record be created in order to respond to a request for a government record or in order to answer questions asking for information.
- Material not received by, or made, maintained, or kept on file by a public agency or public official in the course of official business is not considered a government record.

Given the highly fact-sensitive nature of disclosure requests, consultation with legal counsel is strongly encouraged when a public agency believes that access to a record should be denied under these general exceptions.

What are the specific exceptions from disclosure under OPRA?

Under OPRA, the following specific kinds of records are excluded from the definition of government record. To aid in use, this list has been categorized by type of record and does not reflect the order in which the exceptions appear in the law. Also note that these are not the only exceptions in the law; more follow this list. The Council Web site has a special section dedicated to exceptions.

1. Security and business-related exceptions:

- Trade secrets and proprietary commercial or financial information obtained from any source (including data processing software obtained by a public agency under a licensing agreement which prohibits its disclosure).
- Any record within the attorney-client privilege. However, attorney or consultant bills or invoices that have been redacted to remove any attorney-client privileged information are considered government records.
- Administrative or technical information regarding computer hardware, software, and networks that, if disclosed, would jeopardize computer security.
- Emergency or security information or procedures for any building or facility that, if disclosed, would jeopardize security of the building or facility or the persons therein.
- Security measures and surveillance techniques that, if disclosed, would create a risk to the safety of persons, property, electronic data, or software.

- Information which, if disclosed, would give an advantage to competitors or bidders.
 - Information that is a communication between a public agency and its insurance carrier, administrative service organization, or risk management office.
 - Information that is to be kept confidential pursuant to court order.
 - Information generated by or on behalf of public employers or public employees in connection with the following:
 - Any sexual harassment complaint filed with a public employer, or
 - Any grievance filed by or against an individual, or
 - Collective negotiations, including documents and statements of strategy or negotiating position.
2. Law enforcement-related exceptions:
- Any Medical Examiner or autopsy photograph (including any copy, reproduction, facsimile, negative, print, instant photograph, or videotape), subject to limited exceptions.
 - Criminal investigatory records.
 - Victims' records, except that a victim of a crime shall have access to the victim's own records. A custodian shall not honor anonymous requests for victims' records.
 - Information concerning a criminal investigation, which would normally be made available to the public within 24 hours, may be withheld where it appears that the information requested or to be examined will jeopardize the safety of any person, jeopardize any investigation in progress, or may be otherwise inappropriate to release. This exception will be narrowly construed to prevent disclosure of information that would be harmful to a bona fide law enforcement purpose or the public safety.
 - Files maintained by the Office of the Public Defender that relate to the handling of any case shall be considered confidential and shall not be open to inspection to any person unless authorized by law, court order, or the state Public Defender.
3. Personal privacy exceptions: That portion of any document which discloses the social security number, credit card number, unlisted telephone number, or driver license number of any person (with certain exceptions).
4. Legislative branch exceptions:
- Information received by a member of the Legislature from a constituent or information held by a member of the Legislature concerning a constituent, including but not limited to any written record, e-mail, computer database, or any telephone record, unless it is information that the constituent is required by law to transmit.
 - Any memorandum, correspondence, notes, report, or other communication prepared by, or for, the specific use of a member of the Legislature in the course

of the member's official duties. This exception does not apply to an otherwise publicly accessible report that is required by law to be submitted to the Legislature or its members.

5. Biotechnology exceptions:

- When federal law or regulation requires the submission of biotechnology trade secrets and related confidential information, a public agency shall not have access to this information except as allowed by federal law.
- A public agency shall not make any biotechnology trade secrets and related confidential information it has access to available to any other public agency or to the general public except as allowed pursuant to federal law.

6. Investigations exception:

- Records pertaining to a public agency's active investigation when the public agency determines that inspection, copying, or examination of such records while the investigation is in progress would not be in the public interest. However, this exception does not allow a public agency to prohibit access to a record of that agency that had been open for public inspection, examination or copying before the investigation began.

7. Higher education exceptions:

- Pedagogical, scholarly, and/or academic research records and/or the specific details of any research project conducted under the auspices of a public higher education institution in New Jersey. This exception does not cover that part of the record which gives the name, title, expenditures, source and amounts of funding, and date when the final project summary of any research will be available.
- Test questions, scoring keys, and other examination data pertaining to the administration of an examination for employment or academic examination.
- Records of pursuit of charitable contributions or records containing the identity of a donor of a gift if the donor requires non-disclosure of the donor identity as a condition of making the gift (with certain exceptions).
- Valuable or rare collections of books and/or documents obtained by gift, grant, bequest, or devise that is conditioned upon limited public access.
- Information contained on individual admission applications.
- Information concerning student records or grievances or disciplinary proceedings against a student to the extent that disclosure would reveal the identity of the student.

8. Continuation of any existing exception from public access to a government record that had previously been made under:

- OPRA, or its predecessor: the Right to Know Law;
- Any other New Jersey statute;

- Resolution of either or both houses of the Legislature;
- Regulation promulgated under the authority of any New Jersey statute or Executive Order of the Governor;
- Executive Order of the Governor;
- Rules of Court; or
- Any federal law, federal regulation, or federal order.

There is no single list of all these previously existing exceptions. A partial list consisting of those items covered in Gubernatorial Executive Orders, state statutes, and agency rules are listed in the Appendices of this handbook, and more detail can be found on the Council's Web site. A custodian should consult with legal counsel to determine the applicability of a previously existing exception to a specific request, and whether there are any other exceptions or limitations on disclosures.

Examples of previously existing exceptions:

State Laws: There are various New Jersey state laws that provide that specific records are confidential and are not considered government records. For example, the statute that created the Ombudsman for the Elderly states that all complaints made to the Ombudsman and all investigations conducted by the Ombudsman are confidential and are not considered public records. ([N.J.S.A. 52:27G-8.1 and -13](#))

State Regulations: Various regulations adopted under the authority of an Executive Order issued in 1963 by Governor Hughes ([Executive Order No. 9](#)) allow a state agency to consider specific types of records as confidential.

Gubernatorial Executive Orders: Executive Orders are directives issued by the Governor that have the effect of law and remain in effect indefinitely, unless they have a sunset provision, or until repealed, or cancelled by another Executive Order. Several Executive Orders have been signed over the last 40 years that affect the accessibility of records. [Appendices A and B](#) list the orders and the records they affect.

For example, in January 2002, Governor McGreevey issued [Executive Order No. 3](#), which states that all documents, materials, and information pertaining to counter-terrorism investigation, intelligence, training, and protocols created, compiled, obtained, or maintained by the Office of Counter-Terrorism are deemed to be confidential, non-public, and *not subject to disclosure under OPRA*.

Court Decisions: In addition, if made before the adoption of OPRA, court decisions that ruled on issues of access to public records under the common law may still be considered valid law.

9. Previously recognized privileges or grants of confidentiality

The provisions of OPRA do not abolish or alter any executive or legislative privilege or grant of confidentiality previously established or recognized by the New Jersey Constitution, statute, court rule, or judicial case law, where the privilege or grant of confidentiality may be claimed to restrict public access to a public record or government record.

10. Personnel and pension exceptions

The personnel or pension records of any individual that are in the possession of a public agency, including but not limited to records relating to any grievance filed by or against an individual, shall not be considered a government record and shall not be made available for public access, with the following exceptions:

- An individual's name, title, position, salary, payroll record, length of service, date of separation and the reason therefore, and the amount and type of any pension received are government records (and therefore disclosable).
- Personnel or pension records of any individual will be accessible when another law requires that they be disclosed, when disclosure is essential to the performance of official duties of a person duly authorized by the State of New Jersey or the United States, or when authorized by an individual in interest (that is, an attorney or other representative of the person).
- Data contained in information, which disclose conformity with specific experiential, educational, or medical qualifications, required for government employment or for receipt of a public pension, but not including any detailed medical or psychological information, are government records.

Is e-mail a government record?

E-mail is a means of transmitting information, and the contents of e-mail may meet the definition of a government record. If so, the information contained in e-mail will be subject to the same laws as any other government record.

For example, certain exceptions to government records, such as the privileges for attorney-client communications or intra/inter-agency advisory, consultative, or deliberative materials, may apply to e-mail. OPRA's public policy regarding a citizen's reasonable expectation of privacy would also apply to e-mail.

Since a government record is defined as something that has been made, maintained, kept on file, or received in the course of the official business of a public agency, e-mail created or received by a public employee discussing a sporting event or making lunch or after-work plans would most likely not be considered a government record.

On the other hand, e-mail regularly created or received by public employees and public agencies in the course of official business would likely be considered a government record and subject to disclosure unless there is an exception for it.

A frequently asked question is how long e-mail should be retained in active files or as backups. Public agency information technology staff should be involved with agency administrators and legal counsel to ensure that the appropriate records retention rules are followed regarding e-mail and to ensure that e-mail content that is a government record is properly categorized and retained in accordance with state law. The state Division of Archives and Records Management issues records retention schedules and rules on the use of technology in records storage. Agency officials should consult with DARM to ensure that their practices meet government standards.

Part III – How Does The Public Obtain Government Records?

Section 1 – Making Records Requests

Who is the “custodian of a government record”?

OPRA defines “custodian of a government record” as that official designated by formal action of a public agency’s director or governing body that has custody or control of the government records of the public agency. Some large state departments have determined that they can be more responsive to requests for access to government records by designating more than one custodian. For example, the New Jersey Department of Law & Public Safety is comprised of ten divisions and four agencies; each of the divisions and agencies in Law & Public Safety has designated a custodian to deal with records requests made to that division or agency.

OPRA provides that the custodian of government records in a municipality is the municipal clerk. Requests for records from various arms of municipal government, including the municipal police, should be directed to the municipal clerk. OPRA does not preclude a municipality from developing reasonable and practical measures for responding to OPRA requests, which may include the designation of deputy custodians for particular types of records. Municipalities should carefully consider their practices to ensure that the public is efficiently served and that requests for records are granted or properly denied in a prompt manner.

How is a request for access to a government record made?

A request for access to a government record must be in writing and hand-delivered, mailed, transmitted electronically, or otherwise conveyed to the appropriate custodian. A records request under OPRA cannot be made by telephone.

Some public agencies may not have a dedicated fax line for their records custodians and cannot accept fax requests. Some public agencies may accept requests for access to government records over the Internet or by e-mail. A public agency should examine its capability to accept electronically transmitted requests and establish appropriate policies and practices. The law does not require public agencies to provide new services beyond what they currently provide in order to accept records requests electronically.

Each public agency must adopt a form for the use of any person who requests access to a government record held or controlled by the public agency. This means that a request for access to a government record under OPRA must be in writing, using the request form developed by the public agency.

Are official forms and other procedures required to obtain copies of records?

A request for access to a government record under OPRA must be in writing, using the request form developed by the public agency. Prior to OPRA, many public agencies readily made information available to the public without reference to the Right-To-Know Law as part of their routine activities and without requiring a formal request for access. For example, motor vehicle accident reports, college transcript requests, and copies of municipal resolutions, were routinely made available. OPRA does not prohibit public agencies from continuing those practices.

Since those requests are not made under OPRA, the provisions of OPRA do not apply to such informal requests.

In those cases where records requests are routinely granted as part of the agency's normal activities, a non-OPRA request form or process may be adequate to meet the public interest. Agencies may choose to use such practices.

In the event such a request is denied, the custodian should complete an OPRA request form with the appropriate information, including the reason for denial, and provide it to the requester. In this way, the requester and the custodian rights are preserved.

What are the contents of a Records Request form?

A Records Request form includes three separate sections:

1. General information section
2. Request section
3. Response section

Breaking this into its components, a Records Request form must include the following:

1. General information section:
 - a. Specific directions and procedures for requesting a record;
 - b. A statement as to whether prepayment of fees or a deposit is required;
 - c. The time period within which the public agency is required to make the record available;
 - d. A statement of the requester's right to challenge a decision by the public agency to deny access and the procedure for filing an appeal.
2. Request section:
 - a. Name, address, and phone number of the requester;
 - b. Space for the requester to sign and date the form;
 - c. Specific description of the government record sought. It is important that the requester provide an accurate description of the specific record sought. Public agencies may choose to provide a checklist of those records (with identifying information, such as dates of minutes, etc.) most commonly requested to facilitate the request process;
 - d. An opportunity for the requester to choose the preferred medium if the agency records are available in different formats (physical copy, computer file, etc.).
3. Response section:
 - a. What record(s) will be made available;
 - b. Custodian's reasons if the request is denied in whole or in part;
 - c. When the record will be available;
 - d. Fees to be charged;
 - e. Space for the custodian to sign and date the form.

Once the request has been fulfilled or denied, the custodian shall sign and date the form and provide the requester with a copy. If the custodian is unable to comply with a request for access, the custodian shall indicate the specific reason on the request form and promptly return it to the requester.

Anonymous Requests

The law does not require a requester to provide his or her name and address, even though space for that information appears on the form; thus anonymous requests are permitted. The only time an anonymous request can be denied is when personal information is requested. See the section below, "Disclosure of Victims' Information."

If an anonymous request involves making copies and the estimated cost exceeds \$5.00, the custodian may request a deposit.

Disclosure of Victims' Information

OPRA specifically denies to a requester information about a victim of a crime or the victim's family, including but not limited to a victim's home address, home telephone number, work or school address, work telephone number, social security account number, medical history, or any other identifying information.

One way a public agency may address this is to require a special certification whenever a request is made for personal information, such as a home address, home telephone number, work or school address, work telephone number, social security account number, medical history, or any other identifying information. The certification would require that the requester certify if he or she has ever been convicted of a crime. If the answer was "yes," the requester would be required to list the names of victims and their families. Since space is at a premium on the records request form, using a supplemental for this information can be a useful tool.

In fulfilling the request, the custodian must take care to ensure that information about victims is not disclosed. Advice of legal counsel is also appropriate in considering the request to ensure that proper steps are taken to prevent disclosure of inappropriate personal information. A sample certification form is available from the Government Records Council.

A government record containing a victim's personal identifying information may be released to a convicted individual only if the information is necessary to assist in the defense of the requester. However, a court, upon motion by the requester, must make the determination that the information is necessary to assist in the requester's defense. In any such cases, advice should be sought from the agency's attorney.

Finally, a custodian must not comply with an anonymous request for a government record that contains personal information.

How is the request made?

A requester should deliver the Records Request form to the appropriate custodian of the records at a public agency. Some large state departments may have designated records custodians for divisions and agencies within the department, so a requester should be urged to do some homework in advance to assure that the request is provided to the custodian who is most likely to have the requested record.

The time frame for filling a request for access to government records under OPRA does not begin until the request form has been delivered to the appropriate records custodian. Sending a records request to the wrong records custodian may result in delay of the request or in a denial of access.

OPRA permits a public agency to adopt one of two processes for receiving records requests. Any officer or employee of a public agency who receives a request for access to a government record either:

1. Forwards the request to the custodian of the record; or
2. Directs the requester to the custodian of the record.

In other words, a public agency may decide to permit any employee to accept a records request, or an agency may require delivery of the request to the proper custodian of the record. If a request is given to an employee who is not authorized to accept it, the employee should direct the requester to the custodian.

Internet Requests: Some public agencies have created systems that will permit a citizen to fill out an online request form and file it with the custodian over the Internet. The means of submitting a request form (mail, in-person, Internet) will not affect which records will or will not be available for access. The request form, whether paper or electronic, must contain all of the required information about such matters as appeal of denials, payment of deposits, etc.

Section 2 – Responding to a Request

What is the time frame for a records custodian to grant or deny a request for access to government records?

Custodians should fulfill a request as soon as possible but not later than seven business days after the request is received, provided that the record is currently available and not in storage or archived. Day One (1) is the day following receipt of the request. There are several exceptions to this standard:

1. A shorter time period may be provided by statute, regulation, or executive order.
2. If the government record is in storage or archived, the custodian should so advise the requester within seven business days after receiving the request. The custodian should also advise the requester when the record will be made available. If the record is not made available by that time, it will be considered a denial of access.

If the custodian is unable to comply with a request for access, the custodian must indicate the specific reason for denying access on the request form and promptly return a copy to the requester. The form must be signed and dated by the custodian, as it may serve as the basis for an appeal by the requester to Superior Court or the Government Records Council.

If the custodian fails to respond to the requester within seven business days after receiving a request, the failure to respond will be deemed a denial of the request.

It is permissible for a custodian and a requester to agree to a longer time frame for complying with a records request, particularly in those cases where large amounts of information or archived information are requested. If the requester and custodian agree to such an extension of time, the custodian should prepare the agreement in writing.

If a custodian denies access to a government record, the custodian must be certain that there is legal justification for the denial. Consultation with the agency's legal counsel, who is familiar with the law, may be necessary.

Do some records require immediate access?

OPRA requires that immediate access ordinarily must be granted to budgets, bills, vouchers, contracts (including collective negotiations agreements and individual employment contracts), and public employee salary and overtime information.

Immediate access applies only to government records that are current and readily accessible to the custodian. Otherwise, the regular request process applies.

Immediate access means at once, without delay. The custodian must make an effort to provide the access as soon as possible when a request for this category of records is submitted. It is recognized that compliance with this requirement may interfere with the work of an office because in some cases the requester must be observed while inspecting the records to ensure that documents are not tampered with. Agencies should act reasonably, however, using their best efforts to comply with this requirement.

Public agencies may choose to post some of these records on a Web site to minimize the work of responding to common requests. When this is done, the requester can immediately access those government records by computer and will need to file a Records Request form only if he or she is seeking to have the records provided in a format different from what can be obtained by downloading from the Web site.

What must the custodian do before allowing inspection or copying of records?

Generally, once a request is approved, the custodian of a government record should permit the record to be inspected, examined, and copied by the requester during regular business hours. The law has special provisions for smaller public agencies that do not maintain full-time hours. (See Part 5, "Special Circumstances," for more information on this exception.)

Because of the legislative policy to protect the expectation of privacy of personal information on some public records, it may be necessary for the custodian to redact from a record information that is exempt from disclosure. "Redact" means to delete or cover information that the requester should not see; for example, the social security number, credit card number, unlisted telephone number, or driver license number of any person (with certain exceptions).

Thus, OPRA requires that prior to allowing access to any government record, the custodian must redact from that record any information that meets one of the exceptions discussed above. Even if the requester only wants to inspect or examine (and not copy) a record, the custodian must first redact the exempt information. Redaction may be accomplished by blacking/whiting out on a photocopy of the original record any of the exempt information and then providing a photocopy

of the blacked-out or whited-out version so that restricted information cannot be gleaned from the record. The requester cannot be charged for the extra copies that must be made in order to accomplish redaction.

What happens when a requested record is in use or is in storage?

If the government record requested is temporarily unavailable because it is in use or in storage, the custodian must advise the requester and make arrangements to promptly make available a copy of the record.

If the government record is in storage or archived, the custodian must advise the requester within seven business days after receiving the request. The custodian must advise the requester when the record will be made available. If the record is not made available by that time, it will be considered a denial of access. The length of time required for availability must be a reasonable one; otherwise the requester can file a complaint with the Government Records Council.

Section 3 – Costs and Formats of Copies

What are the charges for copies of records?

Cost for “Routine Copies”

The fee for a copy of a printed record is:

Pages 1 through 10	\$.75/ page
Pages 11 through 20	\$.50/ page
All pages after 20	\$.25/ page

This schedule will apply to most requests for copies of government records unless a statute or regulation sets a different fee. Also, if an agency can demonstrate that its actual cost of duplicating a record is more than these rates, the agency can charge its actual cost of duplicating the record.

For a record embodied in a form other than the printed page, an agency may charge the “actual” cost of duplicating the record. This cost includes only the cost of materials and supplies used to make the copy. An agency cannot charge for labor or for other overhead expenses of making the copy. An example of this includes making copies of engineering drawings that require the services of an outside printing company.

Special Service Charges

In certain circumstances an agency may collect a special service charge in addition to the actual cost of duplicating records embodied in printed form. Where the nature, format, manner of collection, or volume of records to be inspected or copied is such that:

- The record cannot be reproduced using ordinary equipment, in ordinary business size (e.g. a map or plat); or
- Complying with the request involves an extraordinary expenditure of time and effort.

The Special Service Charge (SSC) must be reasonable and based on the actual direct cost of providing the copies. The SSC includes labor cost but cannot include overhead cost.

The custodian must notify the requester in advance of the SSC. The requester has the right to disagree with the SSC. If the custodian and requester cannot reach an agreement regarding the SSC, the request is considered denied.

Other Mediums

OPRA requires that the agency provide a copy of the record in the medium requested. If the agency maintains the record in the medium requested, they can only charge the cost of copying. However, if the request is for a medium that is

- In a medium not routinely used;
- Not routinely developed or maintained; or
- Requires a substantial amount of manipulation or programming of information technology,

the agency can charge the actual cost of copying plus a reasonable special service charge. The special service charge must be based on the cost of the technology and labor actually incurred. This can include programming, clerical and supervisory assistance.

Prior to preparing the medium requested, the custodian must notify the requester of the charge. The requester has the right to disagree with the charge. If the requester and custodian cannot reach an agreement regarding the charge, the request is considered denied.

Deposits and Prepayments

OPRA permits the custodian to require a deposit or prepayment of fees for any request received. It is strongly recommended that the agency require a deposit or prepayment of fees when the request is voluminous, unusual or requires the use of a vendor. Also, the custodian sending material to a vendor and the public paying the vendor directly is permitted as long as appropriate methods are used to contract with the vendor.

OPRA requires the records request form to state whether prepayment of the fees or a deposit is required. The custodian should inform the requester of the deposit or prepayment required and when the documents will be released upon payment. The requirement of deposits or prepayments cannot delay the release of the requested records.

The agency should establish a written policy regarding deposits and prepayment of fees.

Municipalities and Fees

Municipalities must establish their fees, including the special service charge, in advance by ordinance. The ordinance can include hourly rates, cost of duplicating plans such as engineering drawings and the cost of copying in different mediums. It is recommended that municipalities periodically review their request for documents and amend their ordinance accordingly.

Can a requester ask for copies in other than paper formats?

OPRA provides that a custodian must permit access to a government record and provide a copy of the record(s) in the medium requested, if the public agency maintains the record in that medium. For example, if a list of individuals holding a particular license and their places of business is in a database on a computer, a requester may request the list in a common data format copied to a floppy disk, sent via e-mail, or copied to a CD-ROM, if the agency can provide a copy in any of those formats. In these cases, the requester is charged for the actual cost of copying, which can include the cost of any medium. Those rates should be set in advance by the public agency.

What if the agency does not use the medium a requester wants?

If the public agency does not maintain the record in the medium requested, the custodian shall either convert the record to the medium requested **or** provide a copy in some other meaningful medium.

Are there other circumstances when the agency must provide records in other formats?

Yes; they include requests for records in a medium:

- Not routinely used by the agency,
- Not routinely developed or maintained by the agency, or
- Requiring a substantial amount of manipulation or programming of information technology.

In these cases the agency may charge, in addition to the actual cost of duplication, a special reasonable charge based on the cost for any extensive use of information technology, or for the labor cost of personnel providing the service, that is actually incurred by the agency or attributable to the agency for the programming, clerical, and supervisory assistance required, or both.

Before undertaking any conversion to another medium or taking other major actions that would result in the imposition of a special charge, the custodian must first inform the requester that a special charge will be incurred and give the requester the opportunity to accept or reject the extra fee. If the requester objects to the special charge and refuses to pay it, the custodian may deny the request for access to the record. However, if the requester is willing to pay for it, the agency has the responsibility to provide access to the government record in the requested format.

Part IV – What Happens When Access is Denied?

What information must be provided to the public about denial of access?

A custodian must post a statement prominently in public view in the part or parts of the office or offices of the custodian that are open to or frequented by the public. The statement must set forth in clear, concise, and specific terms:

1. The right to appeal a denial of, or failure to provide access to, a government record ;
and
2. The procedure by which an appeal may be filed. This is in addition to the information on appeals found on the Records Request form.

The Government Records Council has made a notice available for the use of public agencies to comply with this provision.

How does someone appeal a denial?

OPRA provides that a person who is denied access to a government record can choose:

1. To file suit in Superior Court; or
2. To file a complaint with the Government Records Council.

How are complaints filed?

To start a summary (expedited) lawsuit in the Superior Court, a written complaint and an order to show cause must be prepared and filed with the court. The court requires a \$200.00 filing fee and you must serve the lawsuit papers on the appropriate public officials.

The court will schedule a hearing and resolve the dispute. Decisions may be appealed to the Appellate Division of the Superior Court. Successful plaintiffs may be entitled to reasonable attorney fees. Plaintiffs should consider consulting with an attorney to learn about initiating and pursuing a summary lawsuit in the Superior Court.

The process for filing a complaint with the Government Records Council is described in Part 5.

What are the legal considerations of appeals?

Burden of proof: The public agency has the burden of proving that the law authorizes the denial of access. Thus, the public agency must be sure it is on firm legal ground when denying access.

Decisions on appeals: If the Superior Court or the Government Records Council determines that access has been denied improperly, the agency will be ordered to grant access.

Attorney's fee: A requester represented by counsel who prevails in any proceeding under OPRA, either in Superior Court or before the Government Records Council, is entitled to a reasonable attorney's fee. However, if the decision of the public agency to deny access to the requested record is upheld, the public agency is not entitled to its attorney's fee from the requester under OPRA.

Part V – What is the Government Records Council

What is the Government Records Council?

OPRA established the Government Records Council in the Department of Community Affairs.

The members of the Government Records Council are the Commissioner of Community Affairs or the Commissioner's designee; the Commissioner of Education or the Commissioner's designee; and three public members appointed by the Governor, with the advice and consent of the Senate, not more than two of whom shall be of the same political party. A public member shall not hold any other state or local elected or appointed office or employment while serving as a member of the Council.

OPRA permits the Government Records Council to employ an executive director and such professional and clerical staff as is necessary to help it carry out its functions.

What are the duties of the Government Records Council?

The Government Records Council has statutory responsibility to:

- Establish an informal mediation program to facilitate the resolution of disputes regarding access to government records;
- Receive, hear, review, and adjudicate a complaint filed by any person concerning a denial of access to a government record by a records custodian;
- Issue advisory opinions, on its own initiative, as to whether a particular type of record is a government record which is accessible to the public;
- Prepare guidelines and an informational pamphlet for use by records custodians in complying with the law governing access to public records;
- Prepare an informational pamphlet explaining the public's right of access to government records and the methods for resolving disputes regarding access, which records custodians shall make available to persons requesting access to a government record;
- Prepare lists for use by records custodians of the types of records in the possession of public agencies which are government records;
- Make training opportunities available for records custodians and other public officers and employees to explain the law governing access to public records; and
- Operate an informational Web site and a toll-free help-line staffed by knowledgeable employees of the Council during regular business hours which will enable any person, including records custodians, to call for information regarding the law governing access to public records and allow any person to request mediation or to file a complaint with the Government Records Council when access has been denied.

How is a Council complaint filed and handled?

A complaint to the Government Records Council must be in writing. It must allege that a custodian of a government record has improperly denied that person access to a government record. The complaint should set forth the facts regarding the request for access to the government records, describing the specific records requested, and the circumstances under which the records were requested, and the denial of access by the records custodian of the public agency. Complaint forms are available from the Council office or from the Council's Web site.

Upon receipt of a written complaint, the Government Records Council shall provide the custodian with a copy of the complaint and shall offer the parties the opportunity to resolve the dispute through mediation before a neutral mediator. Mediation is an informal, non-adversarial process having the objective of helping the parties reach a mutually acceptable, voluntary agreement.

The mediator will help the parties to identify issues, will encourage joint problem solving, and will explore settlement alternatives with the parties.

If any party declines mediation or if mediation fails to resolve the matter to the satisfaction of the parties, the Government Records Council will initiate an investigation concerning the facts and circumstances set forth in the complaint.

At the request of the Government Records Council, the public agency must provide documents and ensure the attendance of witnesses for a Council investigation of any complaint or for the holding of any hearing.

What happens when the Government Records Council starts investigating a complaint?

Complaints generally: All proceedings of the Government Records Council must be conducted as expeditiously as possible. To the maximum extent possible and for the convenience of the parties, the Government Records Council will use teleconferencing, faxing of documents, e-mail, and similar forms of modern communication. When in-person meetings are necessary, the Council will attempt to send representatives to meet with the parties at a location convenient to the parties.

Note: Over time the Council may adopt rules that modify some aspects of the following procedure. Requesters and custodians involved in a complaint should contact the Council to be informed of the procedure in place at the time a complaint is filed.

Step 1: The Council must decide whether the complaint is within its jurisdiction, or whether the complaint is frivolous or without any reasonable factual basis.

Step 2: If the Council concludes that the complaint is outside its jurisdiction or that the complaint is frivolous or without factual basis, it will issue a decision in writing to dismiss the complaint and send the decision to the complainant and the records custodian.

Step 3: If the Council determines that the complaint is within its jurisdiction and is not frivolous and has a factual basis, the Council will notify the records custodian of the nature of the complaint and the facts and circumstances set forth in the complaint.

Step 4: The custodian will have the opportunity to provide the Council with a response containing information concerning the complaint.

Step 5: If the Council is able to make a determination about whether a record should be provided based upon the complaint and the custodian's response, it shall issue a decision in writing and send it to the complainant and the records custodian.

Step 6: If the Council is unable to make a determination about whether a record should be provided based solely upon the submissions, the Council will conduct a hearing on the matter. The hearing will be held in conformity with the rules and regulations for hearings by a state agency in contested cases under the Administrative Procedure Act, when they are applicable.

Step 7: Following the hearing, the Council will, by a majority vote of its members, render a decision as to whether the government record in question, or a portion of it, must be made available for public access to the requester.

Step 8: If the Council determines by a majority vote that a custodian **knowingly** and **willfully** violated OPRA and is found to have **unreasonably** denied access under the **totality of the circumstances**, the Council may impose penalties provided for under OPRA.

Step 9: A final decision of the Council may be appealed to the Appellate Division of the Superior Court.

Meetings held by the Council are subject to the Open Public Meetings Act. The Council may move into closed session during that portion of any proceeding in which the contents of a contested record would be disclosed.

Finally, the Council will not charge any party a fee in regard to actions filed with the Council.

What else should the custodian know about Council hearings and actions?

- If represented by counsel, a requester who prevails in any proceeding shall be entitled to a reasonable attorney's fee. If the decision of the public agency to deny access to the requested record is upheld, the public agency is not entitled to an attorney's fee from the requester under OPRA.
- The Council does not have jurisdiction over the judicial or legislative branches of the state government or any agency, officer, or employee of those branches.
- A public official, officer, employee, or custodian who knowingly and willfully violates OPRA and is found to have unreasonably denied access under the totality of the circumstances shall be subject to a civil penalty of \$1,000 for an initial violation, \$2,500 for a second violation, and \$5,000 for a third violation that occurs within 10 years of an initial violation. The penalty shall be collected and enforced in proceedings in accordance with the Penalty Enforcement Law of 1999.
- Appropriate disciplinary proceedings may be initiated against a public official, officer, employee, or custodian against whom a penalty has been imposed.

Part VI - Special Circumstances

Can a citizen have access to criminal investigatory records?

Generally, the answer is no. A criminal investigatory record means a record which is not required by law to be made, maintained, or kept on file, which is held by a law enforcement agency, and which pertains to any criminal investigation or a related civil enforcement proceeding. Criminal investigatory records are specifically listed as confidential in OPRA.

What information can be released about criminal investigations?

OPRA requires that certain information concerning a criminal investigation be made available to the public within 24 hours of a request for such information or as soon as practicable. Where a crime has been committed, but no arrest has yet been made, information may be provided as to the type of crime, time, location, and type of weapon used, if any.

If an arrest has been made, information may also be provided as to:

- The defendant's name, age, residence, occupation, marital status, and similar background information;
- The circumstances immediately surrounding the arrest, such as the time and place of the arrest, resistance (if any), pursuit, and possession, nature, and use of weapons and ammunition by the suspect and by the police;
- The identity of the investigating and arresting personnel and agency and the length of the investigation;
- Circumstances surrounding bail, whether it was posted and its amount;
- The identity of the complaining party, unless release of that information would be contrary to another law or Court Rule;
- The text of any charges, such as the complaint, accusation, or indictment, unless release of that information would be contrary to another law or Court Rule;
- The name, address, and age of any victims unless there has not been sufficient opportunity for notification of next-of-kin of injury and/or death of the victim, or where the release of the name of any victim would be contrary to another law or Court Rule.

The safety of the victim or the victim's family and the integrity of any ongoing investigation must be considered before releasing any information about the victim.

Information concerning a criminal investigation which would normally be made available to the public within 24 hours may be withheld where it appears that the information requested or to be examined will jeopardize the safety of any person, jeopardize any investigation in progress, or may be otherwise inappropriate to release. This exception will be interpreted to prevent disclosure of information that would be harmful to a bona fide law enforcement purpose or the

public safety. When a law enforcement official determines that it is necessary to withhold such information, the official will issue a statement explaining the decision.

Are records regarding an on-going investigation by a public agency available to the public?

A public agency can deny access to inspection, copying, or examination of records pertaining to an investigation in progress by that agency, when it determines that such access would not be in the public interest. However, this exception does not allow a public agency to prohibit access to a record of that agency that had been open for public inspection, examination, or copying before the investigation began.

What information can a citizen obtain about a public employee?

Since Governor Hughes issued Executive Order No. 9 in 1963 and Governor Byrne issued Executive Order No. 11 in 1975, the legitimate privacy interests of public employees have been balanced with the public's right to know whom it is employing, what jobs the employees are filling, and the identities of those receiving government pensions. Under OPRA, the personnel or pension records of any individual that are in the possession of a public agency, including but not limited to records relating to any grievance filed by or against an individual, will not be considered a government record and shall not be made available for public access.

A citizen has the right to obtain the following information about a public employee: an individual name, title, position, salary payroll record, length of service, date of separation and the reason for separation, and the amount and type of any pension received. In addition, data contained in information which disclose conformity with specific experiential, educational, or medical qualifications required for government employment or for receipt of a public pension, but not including any detailed medical or psychological information, shall be a government record.

This means, for example, that a citizen has a right to learn the salary paid to the superintendent of schools in a school district. It also means that if a job description calls for certain qualifications, such as ten years of experience in a managerial position or an earned master's degree, a citizen is entitled to find out whether a public employee has those job qualifications. Respecting the right of a public employee to some understandable degree of privacy, a citizen is not entitled to have access to a public employee's detailed medical or psychological file.

The purpose of the following exceptions is to prevent the discouragement of public employees from asserting their rights and to help further the State of New Jersey's policy to eradicate sexual harassment from the workplace. Information generated by or on behalf of public employers or public employees in connection with any of the following is confidential:

- Any sexual harassment complaint filed with a public employer;
- Any grievance filed by or against an individual; or
- Collective negotiations.

Disciplinary actions noted in a public employee's personnel file and employee or labor grievances are not considered government records.

What should a custodian do if only part of the requested record is exempt under OPRA?

If the custodian concludes that part of a particular record is exempt from public access, the custodian must redact from a copy of the record that portion which the custodian asserts is exempt and promptly permit access to the remainder of the record. There may be some exceptions, such as attorney-client privilege or the advisory, consultative, deliberative material exception, that extend to the entire record; in those cases, the custodian cannot redact the record.

What can a custodian do in the event that a records request would disrupt the operations of the public agency?

If a request for access to a government record would substantially disrupt agency operations, the custodian may deny access to the record after first attempting to reach a reasonable solution with the requester that accommodates the interests of both the requester and the agency. This is a difficult standard to satisfy, and a custodian should only assert such an exception when truly necessary. The custodian may be able to avoid this situation by helping the requester to provide an accurate and concise description of the specific records the requester is looking for.

What are the hours for inspection of government records in small public agencies?

In the case of:

- A municipality having a population of 5,000 or fewer according to the most recent federal decennial census,
- A board of education having a total district enrollment of 500 or fewer, or
- A public authority having less than \$10 million in assets,

a records custodian must provide access to a government record that is authorized for public inspection or copying during not less than six regular business hours over not fewer than three business days per week, or during the public agency's regularly scheduled business hours, whichever is less.

How does the federal Freedom of Information Act (FOIA) apply in New Jersey?

In short, it does not. The federal FOIA applies only to federal agencies and federal officers; it does not apply to New Jersey public agencies or officials. If a citizen is seeking access to government records from a state, county, or local agency or official, that request must be made pursuant to the New Jersey Open Public Records Act, N.J.S.A. 47:1A-1, et seq.

Can the attorney general, a county or municipal prosecutor, or the Government Records Council bring an action on behalf of an individual citizen to enforce OPRA?

No. The Legislature did not give enforcement authority under OPRA to the attorney general, county or municipal prosecutors, or the Government Records Council, so they cannot file a legal action to enforce rights under OPRA. If a requester believes that a records custodian has improperly denied him or her access to government records under OPRA, the requester has a right either to file a legal action in Superior Court or to file a complaint with the Government Records Council. The Government Records Council can help to resolve disputes and can serve as a tribunal to hear complaints involving government records, but it does not possess the legal authority to bring a legal action on behalf of a private citizen.

When does the Open Public Records Act go into effect?

OPRA takes effect on July 7, 2002, which is 180 days after it was signed into law.

Public agencies are permitted and encouraged to take administrative action in advance of July 7, 2002, as necessary for the implementation of OPRA.

Appendix A – List of Executive Orders with Disclosure Requirements

The following records are considered to be **disclosable** to the public pursuant to the source Executive Order.

DISCLOSABLE RECORDS		
Document	Descriptions and Conditions	Source
Personnel and pension records	<ul style="list-style-type: none"> ▪ Name; ▪ Title; ▪ Salary; ▪ Payroll record; ▪ Length of service; ▪ Information that discloses conformity with specific experiential, educational or medical qualifications required for government employment or for receipt of a public pension, but shall not include detailed medical or psychological information. 	EO 11 (Section 2(a))
	<ul style="list-style-type: none"> ▪ Position; ▪ Date of separation; ▪ Reason for separation; ▪ Amount and type of pension being received 	EO 11 (Section 2(b))
Information concerning crimes reported	<p>If an arrest has been made, information as to the defendant's:</p> <ul style="list-style-type: none"> ▪ Name; ▪ Age; ▪ Residence; ▪ Occupation; ▪ Marital status; <p>...unless the release of such information is contrary to existing law or court rule.</p>	EO 123 (Section 2(iii))
	<ul style="list-style-type: none"> ▪ Information as to the text of any charges, such as the complaint, information and indictment unless sealed by the court. 	EO 123 (Section 2(iv))
	<ul style="list-style-type: none"> ▪ Information as to the identity of the investigating and arresting personnel and agency and the length of the investigation. 	EO 123 (Section 2(v))
	<ul style="list-style-type: none"> ▪ Information on the circumstances immediately surrounding the arrest, including but not limited to the time and place of the arrest, resistance, if any, pursuit, possession and nature and use of weapons and ammunition by the suspect and the police. 	EO 123 (Section 2(vi))

DISCLOSABLE RECORDS

Document	Descriptions and Conditions	Source
	<ul style="list-style-type: none"> Information as to circumstances surrounding bail, whether it was posted and amount thereof 	EO 123 (Section 2(vii))
Individual home address and telephone number	An individual's home address, home telephone number as well as social security number when disclosure is provided by law, when essential to the performance of official duties, or when authorized by a person in interest.	EO 21 Section 3
Information concerning crimes reported	Where crime was reported but no arrest made - information as to the type of crime, time, location and type of weapon, if any	EO 123 (Section 2(i))
	If an arrest has been made, information as to the: <ul style="list-style-type: none"> Name; address; and age of any victims; unless notification to kin has not occurred or the release of information would be contrary to existing law, court rule or harmful to the victim, the victim's family or the ongoing investigation. 	EO 123 (Section 2(ii))
Certified copy of a vital record (birth, marriage, death certificates)	Issued only to persons who establish themselves as the subject of the vital record, the subject's parents, legal guardian or legal representative, spouse, child, grandchild or sibling. The registrar must authenticate the identity of the requester and his or her relationship with the subject of the record	EO 18

Appendix B – List of Executive Orders with Exceptions to Disclosure

The following records are considered to be **non-disclosable** to the public pursuant to the source Executive Order.

NON-DISCLOSABLE RECORDS		
Document	Descriptions and Conditions	Source
Public records excluded by Executive Order	Records excluded by Executive Order of the Governor or by any regulation promulgated under the authority of any Executive Order of the Governor	EO 9
Regulations	Regulations adopted and promulgated by state and local government officials excluding certain records	EO 9 (Section 2)
	Rules proposed by state agencies on July 1, 2002 as modified by EO #26 containing proposed exceptions to disclosure under OPRA are exempted until formal adoption action is taken.	EO 21 (Section 4), EO 26
Personnel and pension records	Except as otherwise provided by law or when essential to the performance of official duties or when authorized by a person in interest, an instrumentality of government shall not disclose to anyone other than a person duly authority by this State or the United States to inspect in connection with his official duties, personnel and pension records of an individual. (See Disclosure section)	EO 11 (Section 2)
Job applicant information	<ul style="list-style-type: none"> • Disclosure of resumes, applications for employment or other information concerning job applicants while a recruitment search is ongoing. • The resumes of unsuccessful candidates may be disclosed after the search has been concluded and the position has been filled, but only where the unsuccessful candidate has consented to such disclosure. 	EO 26 (Section 3)
Governor's Office documents	<ul style="list-style-type: none"> • Any record made, maintained, kept on file or received by the Office of the Governor in the course of its official business which is subject to an executive privilege or grant of confidentiality established or recognized by the Constitution of this State, statute, court rules or judicial case law. • All portions of records, including electronic communications, that 	EO 26 (Section 2)

NON-DISCLOSABLE RECORDS

Document	Descriptions and Conditions	Source
	<p>contain advisory, consultative or deliberative information or other records protected by a recognized privilege.</p> <ul style="list-style-type: none"> • All portions of records containing information provided by an identifiable natural person outside the Office of the Governor which contains information that the sender is not required by law to transmit and which would constitute a clearly unwarranted invasion of personal privacy if disclosed. • If any of the foregoing records shall contain information not exempted by the provision of the Open Public Records Act or the preceding subparagraphs (a), (b) or (c) hereof then, in such event, that portion of the record so exempt shall be deleted or excised and access to the remainder of the record shall be promptly permitted. 	
Morbidity, mortality and reportable diseases of named persons records	Records of this kind that are required to be made, maintained or kept by any State or local governmental agency	EO 9 (Section 3(c))
Illegitimacy records	Records of this kind that are required to be made, maintained or kept by any State or local governmental agency which would disclose information concerning illegitimacy	EO 9 (Section 3(d))
Fingerprint cards, plates and photographs and other similar criminal investigation records	Records of this kind which are required to be made, maintained or kept by any State or local governmental agency	EO 9 (Section 3(e))
Criminal records	Records of this kind that are required to be made, maintained and kept pursuant to the provisions of R.S. 53:1-20.1 and R.S. 53:1-20.2	EO 9 (Section 3(f))
Personal property tax returns	Records of this kind that are required to be filed under the provisions of Chapter 4 of Title 54 of the Revised Statute	EO 9 (Section 3(g))
Records relating to petitions for executive clemency		EO 9 (Section 3(h))
Certain procurement documents of any State department or agency	<ul style="list-style-type: none"> • Records of this kind concerning surveillance equipment and investigatory services, when disclosure of the equipment type and the subject matter of the services could make known to the target of an investigation the fact that an investigation is in progress. 	EO 79 (Section 1)

NON-DISCLOSABLE RECORDS

Document	Descriptions and Conditions	Source
	<ul style="list-style-type: none"> Records concerning installation of intrusion and detection alarm systems, when disclosure could facilitate illegal entry. 	EO 79 (Section 2)
	<ul style="list-style-type: none"> Records concerning studies of computer system security including final reports when disclosure could facilitate fraudulent use of the information 	EO 79 (Section 3)
Domestic security	Government records where accessibility would substantially interfere with the state's ability to protect and defend the state and its citizens against acts of sabotage or terrorism, or which, if disclosed would materially increase the risk or consequence of potential acts of sabotage or terrorism.	EO 21 (Section 1(a))
Complaints and investigations of discrimination, harassment or hostile environments	Confidential records of complaints and investigations of discrimination, harassment or hostile environments in accordance with the State Policy, regardless of whether they are open, closed or inactive	EO 26 (Section 4(a))
Information concerning individuals	<ul style="list-style-type: none"> Information relating to medical, psychiatric or psychological history, diagnosis, treatment or evaluation; 	EO 26 (Section 4(b))
	<ul style="list-style-type: none"> Information in a personal income or other tax return 	
	<ul style="list-style-type: none"> Information describing a natural person's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness, except as otherwise required by law to be disclosed. 	
Test questions, scoring keys and other examination data	Test questions, scoring keys and other examination data pertaining to the administration of an examination for public employment or licensing.	EO 26 (Section 4(c))
Records of one agency held by other agencies	Kept confidential if appropriately designated by the initial agency	EO 26 (Section 4(d))